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# Citizenship as a tool of state-building in Kosovo: status, rights, and identity in the new state

Gëzim Krasniqi

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University of Edinburgh, School of Law  
The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia  
(CITSEE)

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## **Citizenship as a tool of state-building in Kosovo: status, rights, and identity in the new state**

Gëzim Krasniqi, School of Law, University of Edinburgh<sup>1</sup>

### **Abstract**

This paper examines the emergence of an autonomous citizenship regime in Kosovo, with a particular focus on citizenship as a tool of state-building. It argues that in the case of Kosovo citizenship is meant to serve as a link between a war-torn community of people and a new polity based on principles of equality and all inclusiveness, or, as a tool of political integration within the new political entity, which aims at replacing divisions of ethnicity, religion or social status. In addition, it looks at the impact of the tension between the ethno-cultural and political aspects of nationhood in the ongoing state-building process in Kosovo, as well as the stateness problem and contested statehood on citizenship policies.

### **Keywords:**

citizenship, Kosovo, de-ethnicisation, stateness, Europeanisation

### **1. Introduction**

One of the main pressing and demanding tasks in designing and running a polity is that of delineating the legal framework, institutions and social relations around which members of a society will coalesce. That requires determining the nature of the polity, internal organisation and institutional arrangements, legal and constitutional order, as well as the nature of citizenship. The burden on state-builders is thus enormous. In cases of state-creation or emergence, as is usual, two forms of consents become absolute imperatives; the first is internal - that amongst the 'people' (sometimes composed of different groups) about the form and nature of the political community they will create,<sup>2</sup> and the second is external consent, this time within the international community of states (in accordance with international law) whose role is to recognise the emergence of a new state. Should a seceding or a would-be state fall short of any of those decisive agreements, the endeavour of state-building will be seriously impeded and consequences would be far-reaching. However, though absence of either of the consents is detrimental to state-building, the way in which these absences as well as their consequences are manifested, varies widely.

Lack of internal consensus regarding the nature of the polity is a particular characteristic of post-conflict and religiously and/or ethnoculturally diverse societies.

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<sup>2</sup> Bernard E. Brown, (ed.), *Comparative Politics: Notes and Readings, Tenth Edition* (Belmont: Thomson Wadsworth, 2006), 83.

In these cases, most of the arguments coalesce around the rights and political representation of various segments of population as well as in relation to power-sharing arrangements. As is normally the case, the numerically superior groups (core nations) advocate some type of majoritarian democracy,<sup>3</sup> whereas the smaller groups of the society demand various power-sharing arrangements. However, there are cases where significant segments of the population do not accept the boundaries (both the domain and the scope) of their territorial state as a legitimate political unit, thus leading to the stateness<sup>4</sup> problem. When the legitimacy of a political and territorial unit is disputed internally, both the functioning of the state and the democratic consolidation of the political and citizenship regime are put in question. Consequently, other elements central to state-building, such as the forging of an integrative ideology and integration of the society, are rendered problematic.

As regards the definition of citizenship, according to Brubaker, various and differing definitions of citizenship have been shaped and sustained by “distinctive and deeply rooted understandings of nationhood.”<sup>5</sup> Brubaker distinguishes two principal understandings of the concept of nationhood - territorial and political (the French model), where nationhood is understood as political fact, and ethno-cultural (the German model), where nationhood is understood as an ethno-cultural fact. Nonetheless, it is the tension between the ethno-cultural and political aspect of nationhood that has designated most of the societies and states in modern times. Notably, in regions characterised by ethnic, religious and linguistic diversity, as well as aggravated by a history of political division, border shifting and power struggle among different ethnic and cultural groups, such as the Balkans, this tension is exceptionally high.

In the last two decades following the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), this region has been characterised by a high degree of tension between the two concepts of nationhood and citizenship in the definition of the new polities that came into existence. Ultimately, it has been international community's involvement, both political and military, that shaped the character and nature of some of the countries in the region. Internationally brokered agreements, including the Dayton Peace Accords on Bosnia (1995), the Ohrid Framework Agreement on Macedonia (2001) and the Comprehensive Proposal for Kosovo Status Settlement - known as the 'Ahtisaari Plan' (2007), have all either laid down the foundations of the future policies or have reshaped them.

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<sup>3</sup> This may range from the classical democracy, based on the liberal ideas of individual rights to 'ethnic democracy' (term coined by Smooha), a type of democracy, where the state is appropriated by the core (titular) ethnic group and represents a vehicle for the realisation of the national interests of the dominant ethnic group. See Sammy Smooha and Priit Jarve (eds.), *The Fate of Ethnic Democracy in Post-Communist Europe* (Budapest: Open Society Institute, 2005), 20-29.

<sup>4</sup> Juan J. Linz and Alfred Stepan, "Political identities and electoral sequences: Spain, the Soviet Union, and Yugoslavia," in Alfred Stepan (ed.), *Arguing Comparative Politics* (Oxford: Oxford University Press), 200-201.

<sup>5</sup> Rogers Brubaker, *Citizenship and nationhood in France and Germany* (Cambridge and London: Harvard University Press, 1992), x-xi.

This paper focuses on the case of Kosovo, the last territory of the former Yugoslavia to declare independence in 2008, and looks at the tension between the ethno-cultural and political aspects of nationhood in the ongoing state-building process and its reflection on citizenship policies, the stateness problem, the challenge of creating a democratic and all-inclusive society and polity in a war-torn country, and, lastly, the “constitutional mosaic”<sup>6</sup> in Kosovo in the light of wider European Union (EU) standards. Despite many similarities with other new countries in the Balkans, Kosovo’s path to statehood and its very nature as a polity differs substantially from the former, and as such constitutes a unique case study. First, even more than two years after the declaration of independence, Kosovo still does not possess all of the state attributes, including external and internal sovereignty. This mainly stems from the issues related to Kosovo’s contested international subjectivity<sup>7</sup> (as of June 2010, only 69 countries have recognised Kosovo’s independence), and the refusal of Serbs from northern Kosovo to be integrated in the political system of Kosovo. The recent opinion of the International Court of Justice (ICJ), which states that Kosovo’s declaration of independence did not violate general international law, will certainly have an effect on both Kosovo’s efforts to strengthen its statehood and international subjectivity. Last but not least, Kosovo is under close supervision on the part of a range of international institutions and organisations (mainly the EU-led ones), such that it could be described almost as a protectorate. The dominance of the EU in this respect is interesting, in view of the fact that Kosovo still has no contractual relations with the EU, since five out of 27 EU members do not recognise Kosovo’s independence.

Some of the key research questions that this paper intends to address include those related to the nature of the polity in question and to citizenship debates, namely where does the ‘Ahtisaarian Kosovo’ stand in the light of the debates between proponents of group differentiated citizenship (communitarianism and multiculturalism) as against ideas of universal citizenship (civic republicanism and individual liberalism)? Is Kosovo a civic or multiethnic state? Who is the right-and-duty-bearing unit – the individual or the community? What are the prospects for further state-building endeavour in Kosovo in a situation where there is little local ‘investment’ in or ‘ownership’ of the process and where local elites are entrusted with the building of a type of polity (de-ethnicised state and citizenship in a highly

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<sup>6</sup> Term of art developed by Walker, Tierney and Shaw. See Neil Walker, Jo Shaw and Stephen Tierney (eds.), *Europe’s Constitutional Mosaic* (Oxford: Hart Publishing, Forthcoming 2011).

<sup>7</sup> In autumn 2008, Serbia, with the support of the Russian Federation, has initiated the adoption of a resolution by the General Assembly of the United Nations to request from the International Court of Justice (ICJ) an advisory opinion on the unilateral declaration of independence of Kosovo. The General Assembly of the UN adopted resolution 63/3 thus paving the way for the court to examine the request. On 22 July 2010, in a much-anticipated opinion, the Court found that Kosovo’s declaration of independence did not violate any applicable rule of international law, including the Security Council Resolution 1244 and the Constitutional Framework. The ICJ opinion on Kosovo is available at: <http://www.icj-cij.org/docket/files/141/15987.pdf?PHPSESSID=69c9234c8e528835dcd0a24aa83ea9f2> [last accessed: 26.07.2010].

ethnised society) in an environment where ethnic cleavages are still present and where people have never experienced liberal democracy before? Finally, the argument will address the issue of the European perspective of Kosovo and the Europeanisation of its citizenship in the light of the EU engagement (amidst all the internal divergences) in the country and its capacities to build a multiethnic democracy and a functioning state. In this context, utilisation of citizenship as a tool for state-building in Kosovo will be analysed in particular.

In terms of the theories on citizenship, for the purposes of this study I will apply Joppke's concept, which distinguishes between at least three aspects of citizenship; citizenship as status, citizenship as rights and citizenship as identity.<sup>8</sup> This comprehensive account of citizenship goes well beyond the narrow legal definitions of citizenship as a legal tie between the state and its subjects (citizens), as membership in a polity (usually characterised by dichotomy of citizenship and class),<sup>9</sup> or as "social closure,"<sup>10</sup> thus "connecting developments in one dimension of citizenship with developments in other dimensions."<sup>11</sup> The first aspect of citizenship (status) denotes formal state membership and rules to access this; the second aspect (rights) is both about 'classical' civic, political and social rights, as well as about the new generation of rights, namely multicultural recognition; the third aspect (identity) refers to the behavioural dimension of individuals at a time when membership in a state and identity often diverge.<sup>12</sup> In many aspects, the third dimension of citizenship (as identity) largely corresponds to the concept of 'multicultural citizenship' developed by Kymlicka.<sup>13</sup>

Conceiving citizenship in this way is useful in particular in the Balkan context, where the tension between various definitions of nationhood lies at the heart of the political and military conflicts of the 1990s, some of which are still ongoing. Likewise, application of this comprehensive account in the case of Kosovo, a country facing an acute problem in balancing between the need for minority rights protection (including wide range of cultural and political autonomy) and political homogeneity and functionality of the new state, is essential in the attempt to analyse the complex issue of citizenship and state-building process. Nonetheless, before reaching that stage of analyses, it is appropriate to present some limited background material on citizenship-related issues in Kosovo before 2008.

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<sup>8</sup> Christian Joppke, "Transformation of Citizenship: Status, Rights, Identity," *Citizenship Studies*, Vol. 11, No. 1 (February 2007), 38.

<sup>9</sup> See T.H. Marshall's essay on citizenship and social class. T. H. Marshall, "Citizenship and Social Class," in Gershon Shafir (ed.), *The Citizenship Debates: A Reader* (Minneapolis and London: University of Minnesota Press, 1998), 93-127.

<sup>10</sup> Rogers Brubaker, *Citizenship and nationhood in France and Germany*, 21.

<sup>11</sup> Christian Joppke, "Transformation of Citizenship: Status, Rights, Identity," 38.

<sup>12</sup> Christian Joppke, "Transformation of Citizenship: Status, Rights, Identity," 38-39.

<sup>13</sup> Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995).



## 2. Citizenship, Disintegrations and the New State

In order to understand the present citizenship regime in Kosovo, one has to look back into the history of the transformation of citizenship in Kosovo and the spillover from one regime to another. Throughout “the short twentieth century,”<sup>14</sup> Kosovo experienced different phases of political development and different citizenship regimes: the imperial Ottoman citizenship regime, the unitary citizenship of the royal Yugoslavia, the federal citizenship in the socialist Yugoslavia coupled with Serbian republican citizenship, which latter had a dimension which may be termed, a particular quasi-citizenship regime in Kosovo between 1974 and 1989, the new federal citizenship arrangement in the Federal Republic of Yugoslavia (1992 – 1999), and finally the UN-administered quasi-citizenship regime until 2008.

Until the early twentieth century it was the *millet* system that broadly determined and regulated the relationship not between individuals but between different communities (primarily defined in terms of religion) and the state in the Ottoman controlled territories in the Balkans, including Kosovo, as a separate *Vilayet* (province) within the Empire.<sup>15</sup>

Following the demise of the Ottoman Empire in the Balkans, Kosovo was initially occupied and divided by the Kingdom of Serbia and the Kingdom of Montenegro in the course of the Balkan Wars (1912-1913) and after the World War I (WWI) was incorporated into the Kingdom of Serbs, Croats and Slovenes in 1918. The new constitution of the Kingdom, which was approved in 1921 enshrined the idea of “national unity” (*narodno jedinstvo*) in a monarchy, whereas the Citizenship Act of 1928<sup>16</sup> established a single citizenship for the entire Kingdom where every subject had to have a domicile in one of the municipalities. This regime did not tolerate dual citizenship. As far as Albanians in the interwar Yugoslavia are concerned, their status was downgraded to that of a religious minority and apart from being generally treated as second class citizens, various attempts were made by the state to facilitate their migration to Turkey.<sup>17</sup> This situation lasted until the beginning of the World War II (WWII), when the Albanian inhabited territories in Yugoslavia were occupied by Italy and united with the Kingdom of Albania, with the inhabitants of Kosovo under Italian jurisdiction becoming citizens of Albania.<sup>18</sup>

At the end of the WWII and after the communist takeover, Yugoslavia was constructed on the principles of federalism and self-determination of free and equal

<sup>14</sup> Eric Hobsbawm, *The age of extremes: the short twentieth century 1914-1991* (London: Abacus, 1994).

<sup>15</sup> For more see: Gëzim Krasniqi, *The challenge of building an independent citizenship regime in a partially recognised state: the case of Kosovo*, CITSEE Working Paper Series, 2010/04, 3-4; Nawaf A. Salam, “The Emergence of Citizenship in Islamdom,” *Arab Law Quarterly*, Vol. 12, No. 2 (1997) : 125-147.

<sup>16</sup> *Official Gazette of the Kingdom of Serbs, Croats and Slovenes* 245/1928.

<sup>17</sup> For more on citizenship in the interwar Yugoslavia and the position of Albanians see: Gëzim Krasniqi, *The challenge of building an independent citizenship regime in a partially recognised state*, 4-5; Nenad Rava, *Serbia: Elusive Citizenship in an Elusive Nation-State*, CITSEE Working Paper Series, 2010/08, 2-4.

<sup>18</sup> Howard Clark, *Civil Resistance in Kosovo* (London and Sterling: Pluto Press, 2000), 29.

nations. For Kosovo, this meant the return of the Serbian and Yugoslav rule, something that for the Albanian population was a “far-from-welcome development.”<sup>19</sup> Under the 1946 Yugoslav Constitution Kosovo became an “autonomous region” (*oblast*) - a lower status than that of an “autonomous province” (*pokrajina*) given to Vojvodina - of the People’s Republic of Serbia, and Albanians were not defined as people (*narod*)<sup>20</sup> but as a national minority (*nacionalna manjina*).<sup>21</sup> As far as citizenship policies are concerned, during the entire existence of the socialist Yugoslavia<sup>22</sup> three laws on citizenship were enacted (1945/46, 1964 and 1976), corresponding to major constitutional changes at the federal level.<sup>23</sup> In the context of the definition of the citizenry, in the 1974 Constitution, population in Yugoslavia was divided in three categories: “working class,” “working people” and “citizens.”<sup>24</sup>

Although in the earl 1970s Kosovo became a “socialist autonomous province” (SAP) and obtained its own constitution, parliament, government, central bank, constitutional court, as well as representation in the federal institutions independent from the Republic of Serbia and thus was a republic in everything but name, Kosovo, like Vojvodina, did not however have its provincial flag, provincial citizenship (natives of these provinces have automatically received Serbian citizenship), or legal claim to the right of secession guaranteed only to the republics.<sup>25</sup> However, in terms of the citizenship policies, Kosovar authorities had exclusive competencies on a wide range of issues.<sup>26</sup> There is no doubt that in many aspects, this was a quasi Kosovar citizenship. As a result of the constitutional changes 1963-1974, Kosovo was moving closer to becoming, as Pavlović put it, a “specific polity.”<sup>27</sup> Indeed, Kosovo and

<sup>19</sup> Tim Judah, *Kosovo: War and Revenge* (New Haven and London: Yale University Press, 2000), 34.

<sup>20</sup> The category of the people (*narod*) was initially assigned only to Serbs, Croats, Slovenes, Montenegrins, Macedonians and later in 1971 to Bosnian Muslims, under the term “Muslims”.

<sup>21</sup> In 1963 Yugoslavia dropped the term “national minority” to substitute it with a politically less sensitive term *narodnost* (which in English would be translated as “nationality”).

<sup>22</sup> For more on citizenship in the socialist Yugoslavia see: Igor Štiks, *A laboratory of citizenship: shifting conceptions of citizenship in Yugoslavia and its successor states*, CITSEE Working Paper Series, 2010/02; Igor Štiks, ‘Nationality and citizenship in the Former Yugoslavia: from disintegration to the European integration,’ *South East European and Black Sea Studies* 6, 4 (2006) : 483-500; Gëzim Krasniqi, *The challenge of building an independent citizenship regime in a partially recognised state*, 5-7; Nenad Rava, *Serbia*, 4-6.

<sup>23</sup> Francesko Ragazzi and Igor Štiks, “Croatian Citizenship: From ethnic engineering to inclusiveness,” in R. Baubock, B. Perching & W. Sievers (eds.), *Citizenship Policies in the New Europe*, Expanded and Updated Edition (Amsterdam: Amsterdam University Press, 2009), 341.

<sup>24</sup> Vojin Dimitrijević, “The 1974 Constitution and Constitutional Process as a Factor in the Collapse of Yugoslavia,” in Payam Akhavan and Robert Howse (eds.) *Yugoslavia: The Former and the Future: Reflections by Scholars from the Region* (Washington, D.C.: The Brookings Institute, 1995), 55.

<sup>25</sup> Sabrina P. Ramet, *Nationalism and Federalism in Yugoslavia, 1962-1991*, 77.

<sup>26</sup> Gëzim Krasniqi, *The challenge of building an independent citizenship regime in a partially recognised state*, 5-7; Nenad Rava, *Serbia*, 4-6.

<sup>27</sup> Momčilo Pavlović, “Kosovo Under Autonomy, 1974-1990,” in Charles Ingrao and Thomas A. Emmert (eds.), *Confronting the Yugoslav Controversies: A Scholars’ Initiative* (West Lafayette and Washington D.C.: Purdue University Press and United States Institute of Peace Press, 2009), 55.

Vojvodina were very specific polities, profiting from the asymmetrical legal and political arrangement put in place in the 1970s.

### **a) Dissolution of the SFRY, Kosovo and the problem of state succession**

Socialist Yugoslavia lost the last vestiges of its ability to function effectively in June 1991 following the unilateral declarations of independence by Slovenia and Croatia and the outbreak of the conflict one day later. In response to that, the European Communities (EC) decided to establish a so-called European Communities Conference on Yugoslavia (ECCY) under the chairmanship of Lord Carrington and Cyrus Vance.<sup>28</sup> As part of this process, the EC established an Arbitration Commission (known as the Badinter Commission) on 27 August 1991, with the mandate to help in resolving “differences and disputes” between “different authorities” within Yugoslavia.<sup>29</sup> In compliance with the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union,<sup>30</sup> the Commission delivered its first three opinions between 29 November 1991 and 11 January 1992, which pronounced that Yugoslavia is “in the process of dissolution,”<sup>31</sup> that only republics have the right to self-determination and not national minorities,<sup>32</sup> and that the previous administrative republican borders should become international frontiers<sup>33</sup> based on the principle of *uti possidetis juris*.<sup>34</sup> It is obvious that the Commission aimed at reconciling self-determination with the principle of *uti possidetis*, applying the latter for the first time outside the colonial context. This paved the way for the Yugoslav republics (those wishing to apply) to be recognised as independent states, but not for the autonomous provinces.<sup>35</sup>

Although the Arbitration Commission found that the SFRY has disintegrated and that the new states created on its territories were now its substitutes, the issue of

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<sup>28</sup> Steve Terret, *The Dissolution of Yugoslavia and the Badinter Arbitration Commission: A contextual study of peace-making efforts in the post-Cold War world* (Aldershot: Ashgate, 2000), 78.

<sup>29</sup> Declaration on Yugoslavia, adopted at EPC Extraordinary Ministerial Meeting in Brussels, 27 August 1991 (EPC Press Release P.82/91).

<sup>30</sup> Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, adopted by the Council of the European Community, 17 December 1991, reprinted in *Europe* (No. 5632, n.s.), 18 December 1991.

<sup>31</sup> *Conference on Yugoslavia Arbitration Committee. Opinion No. 1, 29 November 1991.*

<sup>32</sup> *Conference on Yugoslavia Arbitration Committee. Opinion No. 2, 11 January 1992.*

<sup>33</sup> *Conference on Yugoslavia Arbitration Committee. Opinion No. 3, 11 January 1992.*

<sup>34</sup> *Uti possidetis juris* is a principle of international law, which states that newly formed sovereign states should have the same borders that they had before their independence.

<sup>35</sup> In response to the crisis in the SFRY and the forcible abolition of its autonomy by Serbia, Kosovo declared its independence on 22 September 1991 which was confirmed later in a referendum. Apart from the state of Albania, no state recognised Kosovo's independence at that time. Kosovo also applied formally for recognition in a letter sent to Lord Carrington but, despite the fact that it has been a federal entity within the SFRY, its application was not taken into consideration. See Marc Weller, *Contested Statehood: Kosovo's Struggle for Independence* (Oxford: Oxford University Press, 2009), 39-50; Tim Judah, *Kosovo*, 65.

state succession remained a source of disagreement between the former republics for almost a decade. The Republic of Serbia and the Republic of Montenegro, which together established the Federal Republic of Yugoslavia (FRY) with Kosovo as an integral part of Serbia, insisted on the view that the other republics had seceded from the SFRY and that the FRY was the only successor state of the socialist federation.<sup>36</sup> Nonetheless, in conjunction with the view that the SFRY had disintegrated, the EC established a Working Group on Succession Issues that prepared draft rules on succession issues, including citizenship. However, the Agreement of Succession Issues<sup>37</sup> between the five successor states (Bosnia and Herzegovina, Croatia, Macedonia, Slovenia and the FRY), which was signed in 2001 and entered into force in 2004, does not touch upon the issue of citizenship. In this case, citizenship was treated as a matter of exclusive authority for the states. This meant that each successor country was free to regulate the issue of citizenship separately. Certainly, adoption of such an approach to citizenship complicated the matters for all the citizens of any former republic who were living in another republic at the moment of SFRY's collapse. As far as Kosovo is concerned, it has not been part of the process of succession due to the fact that it was disregarded officially by the Badinter Commission in 1991.<sup>38</sup> As a consequence of this, the FRY<sup>39</sup> has inherited Kosovo, its property and citizens.

In terms of citizenship, the FRY did not adopt a new law until 1996.<sup>40</sup> As a result, thousands of Serb refugees from Bosnia and Croatia who moved to the FRY were subject to insecurity with regard to their citizenship status in absence of the new law. In a similar vein, the serious and massive occurrence of discriminatory and repressive practices aimed at ethnic Albanians in Kosovo, as a whole, "resulting in widespread involuntary migration"<sup>41</sup> and removal of citizenship of those who fled became an everyday practice in Kosovo and was condemned internationally.<sup>42</sup> In addition to these attempts made to deprive Albanians that were driven abroad of the FRY citizenship, new legislation was adopted to encourage Serb settlement in Kosovo.<sup>43</sup> As described by Rava, the FRY authorities have used a particular type of

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<sup>36</sup> Though the FRY authorities claimed exclusive legal continuity with the SFRY, because of the lack of support from international community this became impossible and FRY had to apply for membership at the UN (in November 2000) as one of the successor states of SFRY.

<sup>37</sup> See UN Treaties, Volume 2262, I-40296.

<sup>38</sup> Enver Hasani, "The evolution of the succession process in former Yugoslavia," *Thomas Jefferson Law Review*, 29 (2006), 114.

<sup>39</sup> In 2003, the FRY was reconstituted as the State Union of Serbia (with Kosovo as its part) and Montenegro. Following Montenegro's independence in 2006, Serbia inherited all legal obligations in connection to Kosovo.

<sup>40</sup> See Nenad Rava, *Serbia*, 6-10; Gëzim Krasniqi, *The challenge of building an independent citizenship regime in a partially recognised state*, 5-7.

<sup>41</sup> See UN General Assembly Resolution 50/190 (A/RES/50/190), 22 December 1995.

<sup>42</sup> Marc Weller, *Contested Statehood*, 62.

<sup>43</sup> *Ibid.*, 31.

'blackmail' urging Serb refugees to register their residence in Kosovo or Vojvodina in order to gain access to the Yugoslav citizenship.<sup>44</sup>

Discriminatory and arbitrary practices, including mass dismissals of ethnic Albanian civil servants from the ranks of the public administration, created a new harsh reality for the Albanian population and turned Kosovo into a segregated society. In reaction to these repressive measures, Albanians in Kosovo, under the leadership of the Democratic League of Kosovo (LDK), organised their own referendum on independence, declared Kosovo's independence, which was, a state of virtual reality or 'phantom state,'<sup>45</sup> and set up their own parallel system of education and health.<sup>46</sup> From the outset, the new citizenship regime of the FRY *de facto* downgraded the position of Albanians (from "nationality" to "national minority") and striped them of their basic political and legal entitlements. Having been treated in such an exclusionary way, they responded with boycotts and self-exclusion when it came to electoral processes.

Increased Yugoslav military presence in Kosovo, and the "climate of dismay"<sup>47</sup> among Kosovar Albanians resulting from the fact that they have simply been ignored by international community, led to the eruption of the armed conflict in Kosovo in early 1998 between the Yugoslav military and paramilitary forces and the Kosovo Liberation Army (KLA) paving the way for the military intervention of the North Atlantic Treaty Organization (NATO) in the territory of the FRY. In response to this, the FRY authorities carried out a large-scale action of ethnic cleansing in Kosovo which resulted in more than 850,000 Kosovar Albanian refugees being deported into neighbouring countries and hundreds of thousands of others became internally displaced persons.<sup>48</sup> In the meantime, the passports and identity cards of those driven out were destroyed and the licence plates of the laden cars and trucks were removed to make any return impossible.<sup>49</sup>

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<sup>44</sup> Nenad Rava, *Serbia*, 9-10.

<sup>45</sup> Tim Judah, *Kosovo: war and revenge*, 65.

<sup>46</sup> The Kosovar Albanian movement of the 1990s within itself had two different, though ultimately related, dimensions: a political one, embodied in the so called "Institutions of the Republic of Kosova" and a social dimension – education system and health care network. Both these dimensions were extensively dependant on an unprecedented solidarity and pre-existing and newly established social and familial networks and money coming from the large Albanian diaspora in the EU countries and the U.S. See Howard Clark, *Civil Resistance in Kosovo*, 34. For more on the support that the Albanian diaspora provided for the political and military national movement in Kosovo in the 1990s see Paul Hockenos, *Homeland Calling: Exile Patriotism and the Balkan Wars* (Ithaca and London: Cornell University Press, 2003), 177-261.

<sup>47</sup> Marc Weller, *Contested Statehood*, 77.

<sup>48</sup> UNHCR Country operation: Federal Republic of Yugoslavia at glance, Global Report, (Geneva: UNHCR, 1999).

<sup>49</sup> UNHCR, Protection Framework Guidance: Kosovo Situation - Revision 1 (1999); Marc Weller, *Contested Statehood*, 166.

## **b) Citizenship under international administration**

On 10 June 1999 Kosovo was placed under the direct international (interim) administration, under the authority of the United Nations and its Resolution 1244, which vested all legislative and executive powers, including the administration of the judiciary, in the hands of the Special Representative of the Secretary General (SRSG) and the United Nations Interim Administration Mission in Kosovo (UNMIK). Over the years, UNMIK took significant steps toward the complex task of creating a political regime for democratic self-government in Kosovo, or “democratisation without a state”.<sup>50</sup>

In terms of the legislation, although the new UN-drafted legislation did not regulate the issue of citizenship, due to the fact that internationally Kosovo was still part of the FRY and its inhabitants were legally Yugoslav citizens, UNMIK created a separate civil register (Central Civil Register of Kosovo)<sup>51</sup> for the residents of Kosovo, which in a way became a substitute for citizenship regulations, and issued UN Travel Documents to habitual residents in Kosovo.<sup>52</sup> Hence, in certain aspects, the interim international administration in Kosovo, which was mandated to administer Kosovo until the moment of final status settlement, set up the foundations of a new quasi citizenship regime, quite similar to the one that existed in the period between 1974 and 1989. In such a situation, residents of Kosovo could be divided into two categories: those who still possessed Yugoslav passports<sup>53</sup> (and UNMIK documents) and those who possessed only the UNMIK ones. The latter were *de facto* stateless. In fact, in 2004 Serbia adopted a new citizenship law,<sup>54</sup> which did not make any specific provision for the residents of Kosovo or take into consideration the new reality in Kosovo. Thus, Kosovar residents were in principle considered to be Serbian citizens.

## **3. Politics and Citizenship in the New State**

After more than six years of international administration in Kosovo, on 24 October 2005, the Security Council authorised the beginning of the status process, mediated by the former Finnish President, Martti Ahtisaari, in the capacity of the Special Envoy of the Secretary-General of the United Nations for the future status

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<sup>50</sup> Oisin Tansey, “Democratization without a State: Democratic Regime-building in Kosovo,” *Democratization* 14 (1), (2007), 129-150.

<sup>51</sup> UNMIK/REG/2000/13.

<sup>52</sup> For more on citizenship in Kosovo under the UN administration, see Gëzim Krasniqi, *The challenge of building an independent citizenship regime in a partially recognised state*, 9-11.

<sup>53</sup> Through its parallel structures in Kosovo or municipal offices in Serbia, Serbian authorities continued to issue passports for Albanians as well even after 1999. In the course of eight years (1999-2007) Serbian authorities claim to have issued 200,000 passports for Kosovo residents. See AFP, *Kosovo Albanians shun Serbia, but not its passports*. 8 September 2007. [www.balkanpeace.org](http://www.balkanpeace.org).

<sup>54</sup> See Law on Citizenship of the Republic of Serbia 2004. *Official Gazette of the Republic of Serbia*, No. 135/04; Nenad Rava, *Serbia*, 10-13.

process for Kosovo.<sup>55</sup> With 15 rounds of negotiations organised, and with no compromise between leaders of Serbia<sup>56</sup> and Kosovo on the horizon, on 26 March 2007, Ahtisaari presented his final version of the Comprehensive Proposal for the Kosovo Status Settlement (known as the Ahtisaari Plan) to the Security Council and the Secretary General. According to Weller, this proposal, which contains a short framework agreement and twelve annexes, “provided everything that Kosovo would require to form itself into a state, and for others to recognise it as a state should they so wish.”<sup>57</sup> With the UN Security Council unable to agree on a new resolution that would endorse the proposal (due to Russia’s objections), a new round of talks was initiated between Kosovo and Serbia brokered by a Troika of EU, Russia and America’s special envoys. With neither side willing to yield on the basic question of sovereignty, the additional 120 days of negotiations ended without a result, thus opening the way for the unilateral declaration of independence of Kosovo. Having already endorsed the Ahtisaari Plan in March 2007, Kosovo declared independence on 17 February 2008.<sup>58</sup> Kosovo was declared “to be a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and protection under the law.”<sup>59</sup> Shortly thereafter, the Kosovar Assembly adopted a whole package of basic statehood laws<sup>60</sup>, including the Law on Citizenship,<sup>61</sup> in this way setting up contours of an autonomous citizenship regime, the first one ever in the history of Kosovo. Certainly, the adoption of the latter law immediately after the declaration of independence is an indicator of the central place of citizenship in the state-building process in Kosovo.

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<sup>55</sup> For more see the official site of the Office of the Special Envoy of the Secretary-General of the United Nations for the future status process for Kosovo, available at: <http://www.unosek.org>.

<sup>56</sup> In the midst of negotiations, in autumn 2006, Serbia adopted a new constitution which confirmed Kosovo as an integral part of Serbia, offering it autonomy within the framework of the Serbian sovereignty. Serbia organised a referendum on new constitution but ethnic Albanians from Kosovo were not eligible to vote. See Marc Weller, *Contested Statehood*, 208-209.

<sup>57</sup> *Ibid*, 212.

<sup>58</sup> In fact, the Ahtisaari Plan served as the legal and political basis for declaration of independence of Kosovo and, according to the Constitution of Kosovo (article 143.2), it shall take precedence over all other legal provisions in Kosovo. See *The Constitution of the Republic of Kosovo*, Pristina, 15 June 2008, available at: <http://www.assembly-kosova.org/?krye=documents&docid=48&lang=en> [last accessed: 20.05.2010].

<sup>59</sup> See *Kosovo Declaration of Independence*, 17 February 2008, available at: [http://www.assembly-kosova.org/common/docs/Dek\\_Pav\\_e.pdf](http://www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf) [last accessed: 01.06.2010].

<sup>60</sup> These laws derive from Annex XII (Legislative Agenda) of the Comprehensive Proposal for the Kosovo Status Settlement that the Assembly of Kosovo undertook to approve immediately after the declaration of independence in order to implement the terms of it. Most of these laws provide wide-range rights for minorities living in Kosovo, in particular Serb minority. See *The Comprehensive Proposal for the Kosovo Status Settlement*, 26 March 2007, available at: <http://www.unosek.org/unosek/en/statusproposal.html> [last accessed: 19.04.2010].

<sup>61</sup> Law on Citizenship of Kosova. *Official Gazette of the Republic of Kosovo*, No. 26/2008.

In what follows I look at the Kosovar citizenship regime distinguishing between at least three aspects of citizenship; citizenship as status, citizenship as rights and citizenship as identity.

**a) Citizenship as status: openness/restrictiveness of the new Kosovar citizenship regime<sup>62</sup>**

Multi-ethnicity is the keyword of the Ahtisaari Plan, Kosovo's Declaration of Independence and the Kosovar Constitution. As a result of this, despite the fact that Albanians comprise the absolute majority of the population, Kosovo is not defined as a national state of its titular nation, but a multi-ethnic state of all citizens, guided by principles of non-discrimination and equal protection under the law of all communities<sup>63</sup>. Its citizens are tied to the new country based on a common citizenship, rather than on their national belonging or descent. Based on its legislation, Kosovo is, using Walzer's typology, more of a 'French political club' than a 'German family home'.<sup>64</sup> Certainly, citizenship is meant to serve as a link between a war-torn community of people and a new polity based on principles of equality and all inclusiveness, or, as a tool of political integration within the new political entity. It aims at replacing divisions of ethnicity, religion or social status, therefore serving as a mechanism of ensuring equality before the law. As far as the new law on citizenship is concerned, its defining characteristics are application of the 'new state' model and the principle of de-ethnicisation.

In the absence of a previous autonomous citizenship regime on which it could be based, Kosovo's only viable solution was to opt for what Brubaker calls the 'new state' model.<sup>65</sup> The two main provisions that define the scope and character of citizenship in Kosovo, including the body of citizens, inclusiveness, and openness, are articles 28.1 and 29.1. These provisions, one of which (29.1) derives from the Ahtisaari Plan, are incorporated in the new law in the form of transitional provisions. In order to address the issue of refugees who left Kosovo in 1999, pursuant to art. 1.6

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<sup>62</sup> For a very detailed analysis of the new Kosovar citizenship law, including modes of acquisition and loss of citizenship, as well as procedures see Gëzim Krasniqi, *The challenge of building an independent citizenship regime in a partially recognised state*, 13-20.

<sup>63</sup> Kosovar legislation does not use the common terminology 'majority' and 'minority'. Rather, it uses the term 'communities', which refers to inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo, regardless of their number.

<sup>64</sup> Michael Walzer, *Spheres of Justice, A Defense of Pluralism and Equality* (New York, London: Basic Books, 1983), 41.

<sup>65</sup> According to Brubaker, this category of states includes states that previously did not have an independent basis of citizenship (republic-level citizenship – as is the case with the former Yugoslav republics). As a result, these states had to define their initial body of citizens primarily in terms of territory and residency (though with some limitations and conditions). See Rogers Brubaker, "Citizenship struggles in Soviet successor states," *International Migration Review* 26 (2) Special Issue: The New Europe and International Migration, (1992) : 269-291.



of Annex I of the Ahtisaari Plan, the Kosovar Law on Citizenship enables all pre-war residents of Kosovo (who were citizens of the Federal Republic of Yugoslavia) and their direct descendants to be considered as citizens of Kosovo (articles 29.1 and 29.2). Article 28.1 of the new law, on the other hand, provides that any habitual resident of Kosovo based on UNMIK/Reg/2000/13 is considered *ex lege* a citizen of the Republic of Kosovo (art. 28.1). The principle of dual citizenship is especially important in the case of Kosovo and was introduced mainly to accommodate the needs of the Serb minority in Kosovo (but also many Albanians living in diaspora). Generally considered as a sensitive issue, dual citizenship in Kosovo is considered to be an “open door” for integration of the Serb population into the Kosovar society and state.<sup>66</sup>

Irrespective of the fact that it has a considerable diaspora<sup>67</sup> and is surrounded by ethnic Albanians living as minorities in the former Yugoslav republics, namely Serbia, Macedonia and Montenegro, Kosovo’s capacities in designing and implementing diaspora or kin-state policies are limited both legally and practically. Kosovo’s constitutional definition as a state of its citizens (as opposed to an ethno-national state) formally prohibits Kosovo from adopting paternalist policies toward the Albanian minorities in the neighbouring states, especially the ones residing in Presevo Valley (an Albanian inhabited region in southern Serbia) who have multiple political, cultural and economic ties with Kosovo. As far as the Kosovar diaspora is concerned, despite the fact that the law foresees facilitated naturalisation<sup>68</sup> for this category, it does not define or differentiate it on the basis of ethnicity. According to article 13.3 “A member of the Republic of Kosova Diaspora shall be also every person who is a descendant within one generation of a person referred to in paragraph 2 of this Article and who can prove that he/she maintains family links in Republic of Kosova.”<sup>69</sup> Along these lines, the Kosovar diaspora does not enjoy any special rights in Kosovo; as Kosovar citizens they can vote either by coming to Kosovo or by post (a right exercised by very few) and the Kosovar Parliament has special seats reserved for minorities but not for the diaspora. Despite the fact that the Kosovar diaspora is quite big and played an important role in the past (in the form of “long-distance nationalism”<sup>70</sup> when it provided essential financial support for the Kosovar Albanian

<sup>66</sup> Personal interview with a member of the Kosovar Parliament and former member of the Kosovo’s negotiating team on final status settlement, Pristina, 11.05.2010.

<sup>67</sup> The Kosovar diaspora is estimated to number between 400,000 and 800,000. See Muhamet Mustafa, et al. *Diaspora and migration policies* (Pristina: Forum 2015, 2007); Amir Haxhikadrija, *Diaspora as a driving force for development in Kosovo: myth or reality?* (Gjakova: Forum for democratic Initiative, 2009). Available at: [www.sdc.admin.ch/ressources/resource\\_en\\_183042.pdf](http://www.sdc.admin.ch/ressources/resource_en_183042.pdf) [last accessed: 10.06.2010].

<sup>68</sup> Article 13.1 of the citizenship law stipulates that a member of the Kosovar diaspora shall acquire the citizenship of Republic of Kosovo upon his/her application even if he/she does not fulfil the requirements, related to requirement about the age, residence, financial means and knowledge of the official languages) set out in subsections a), b), d), e) and f) of paragraph 1 of Article 10 of this Law.

<sup>69</sup> Law on Citizenship of Kosova. *Official Gazette of the Republic of Kosovo*, No. 26/2008.

<sup>70</sup> Benedict Anderson, *Long-Distance Nationalism: World Capitalism and the Rise of Identity Politics*. The Whertheim Lecture (Amsterdam: CASA, 1992).

political and military movement in the 1990s) and today provides substantial economic support in form of remittances, in terms of the everyday politics, they have been given little opportunity to influence directly politics in Kosovo from the long-distance and practice the “politics without accountability.”<sup>71</sup>

*Politics of numbers, return of refugees and property rights*

In general, politics of numbers and return of the displaced people have been placed highly on the political agenda in post-conflict societies in Croatia, Bosnia and Herzegovina, Serbia, Kosovo and Macedonia. In the case of Kosovo, the task of constituting the initial body of citizens is further complicated as a result of the ongoing disagreements related to the number of Serb and other non-Albanian (mainly Roma) refugees of the 1999 and their properties and the right to return. The last general census in Kosovo was organised in 1981 and since then all voluntary and forced movements of people, including massive deportations during the 1998-9 war, and the migratory path of many post-war refugees have gone almost completely unrecorded. The UNHCR estimated that the total number of non-Albanian refugees that left Kosovo in 1999 is 200,000. Yet, Serbian authorities claim that the number of the Serbs who left Kosovo is around 250,000.<sup>72</sup>

Responding to the needs of these people as well as international criticism, in 2005, the Kosovar Government has established a special ministry – the Ministry for Returns and Communities - in order to facilitate the return and reintegration of these communities. So far this ministry, in cooperation with various local and international institutions and agencies, has created conditions and enabled the return of some 20,000 non-Albanian refugees. As far as the RAE (Roma, Ashkali and Egyptian) communities are concerned, the Kosovar government had adopted the Strategy for Integration of Roma, Ashkali and Egyptian Communities in the Republic of Kosovo 2009-2015<sup>73</sup> to provide them with better conditions and to facilitate their integration into the Kosovar society. However, since the declaration of independence, the Kosovar government has been under pressure from many EU countries to sign agreements for repatriation of the Kosovar refugees, many of whom are from the ranks of RAE communities.<sup>74</sup> The latter find it very hard to make their voice heard in

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<sup>71</sup> Ibid.

<sup>72</sup> It is very likely that Serbia includes some 14,000 Serb refugees from Croatia and Bosnia and Herzegovina that were temporarily settled in Kosovo, military and administrative Yugoslav staff and (their families) that were deployed in Kosovo in the 1990s, as well as other non-Serbs (mainly Roma), as refugees from Kosovo. For more detailed analysis of the number of refugees from Kosovo see UNHCR, *Federal Republic of Yugoslavia information bulletin (Excluding Kosovo)*, 2000; UNHCR, *Statistical Overview: Update as at end of August 2009*. Pristina: UNHCR OCM Pristina, 2009; ESI, *The Lausanne Principle: multiethnicity, territory and the future of Kosovo's Serbs*. Berlin/Pristina, 2004.

<sup>73</sup> Available at: <http://www.web-kfos.org/home/images/stories//rae-eng.pdf> [last accessed: 10.06.2010].

<sup>74</sup> Local as well as international NGOs have expressed reservations about the repatriation plans since the return of people from abroad will create further difficulties in relation to an already challenging economic situation and that many RAE returnees are at risk of statelessness. For a detailed analysis of

a situation where the Kosovar Government, as well as international institutions, focus primarily on the situation of the Serbs in Kosovo, thus 'forgetting' the needs of other minority communities in Kosovo.

Yet another important issue related to the right of refugees to return home and their rights to full membership in the body of citizens concerns property rights. According to Verdery, many classic liberals see very close connections between citizenship, identity and property, and the latter became an important element in the context of new identity dynamics and understandings of the citizenship in post-communist countries.<sup>75</sup> In Kosovo, such issues related to the process of return and the re-integration of refugees in the body of citizens and into society are intrinsically related to the right to property. The very problem started in the early 1990s when Serb authorities adopted new regulations that prevented transfer of immovable property from Serbs to Albanians and other discriminatory measures to stimulate settlement of Serbs in Kosovo.<sup>76</sup> In the course of the conflict, private and socially owned property was heavily affected, with hundreds of thousands of buildings burned or destroyed. Likewise, many Serb and RAE displaced people as well as Albanians (from northern Kosovo) have not had access to their properties since 1999. In autumn 1999 UNMIK decided to establish the Housing and Property Directorate<sup>77</sup> to address the issue of ownership with regard to private immovable property, including agricultural and commercial property, as well as illegal occupancy of properties. In 2006, this institution was transformed into the Kosovo Property Agency, which so far has received 40,730 applications for claimed properties.<sup>78</sup> Certainly, it will take years to solve all the backlog of cases related to ownership and illegal occupancy of private properties.

In conclusion to this section, Kosovo's citizenship legislation, though very open and inclusive, will take time and enormous efforts to be implemented up to the point where Kosovo will have a clearly defined citizenry. In contrast to many other post-communist countries in the region, Kosovo's legislation is not designed as and cannot serve as an instrument of "bureaucratic ethnic cleansing"<sup>79</sup> in the process of the constitution of the body of citizens. In terms of the technical side of the process, the much-awaited and much-needed general census, planned for 2011, will be a huge

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the RAE refugees, their living conditions in Kosovo and repatriation plans see M. Tmava & A. Beha, *Helplessness: Roma, Ashkalia and Egyptian forced returnees in Kosovo* (Pristina: RAD Centre, 2009).

<sup>75</sup> See Katherine Verdery, "Nationalism, Citizenship, and Property: Eastern Europe Since 1989," *American Ethnologist*, Vol. 25, No. 2 (1998) : 291-306.

<sup>76</sup> Tim Judah, *Kosovo*, 62.

<sup>77</sup> UNMIK/REG/1999/23, 15 November 1999, available at:

<http://www.unmikonline.org/regulations/1999/reg23-99.htm> [last accessed: 10.06.2010].

<sup>78</sup> Out of this number, 7242 cases have been decided so far. However, problems remain with regard to the enforcement of decisions to free illegally occupied properties and pay compensation. For more see the official web page of the Kosovo Property Agency: <http://www.kpaonline.org/default.asp>.

<sup>79</sup> Robert M. Hayden, "Constitutional Nationalism in the Formerly Yugoslav Republics," *Slavic Review*, Vol. 51, No. 4 (1992), 668.

step forward in consolidation of the citizenry. As for the return and integration of refugees, more time and, above all, political willingness is needed.

### **b) Citizenship as rights**

As already mentioned at the beginning of this paper, citizenship today is about classical civic, political and social rights, as well as about the new generation of rights, namely multicultural recognition. As far as the latter is concerned, Kellas has argued that the whole twentieth century represents an attempt to make democracy compatible with a 'culturally plural' society, as an alternative to the classic aim of nationalism to form a homogenous 'nation-state.'<sup>80</sup> On the one side, communitarianists, such as Taylor and Walzer, have argued for the necessity of recognizing different group identities<sup>81</sup> and providing vulnerable groups "with a voice, a place and a politics of their own."<sup>82</sup> On the other side, Kymlicka, who has defended the ideal of liberal multiculturalism, argues for the legitimacy and necessity of supplementing traditional human rights with minority rights through a theory of justice that takes into consideration the multicultural nature of the states, which would include both universal human rights and certain group differentiated rights.<sup>83</sup> In terms of citizenship, in contrast to individual liberal and civic republican approaches to citizenship which are universalistic in character and seek to eliminate all ethnic, religious and linguistic differences respectively, communitarians argue for a "group differentiated citizenship and a heterogenous public."<sup>84</sup>

This is exactly the strategy adopted by international community in the case of Bosnia and Herzegovina, Kosovo and, to a certain extent Macedonia. In the case of Kosovo, ethnicity and group rights were the paramount values in UNMIK's ethnicised discourse. Although the very idea of multicultural liberalism is about additional group rights that would only supplement individual rights, what we see in the case of Bosnia and Kosovo, nonetheless, is an attempt to overemphasise group-differentiated rights. So, international actors put too much emphasis on collective and cultural rights, thus (using Barry's term<sup>85</sup>) "culturising" group conflicts and perpetuating ethnicity as the main signifier. The Dayton Agreement in Bosnia and the Ahtisaari Plan in Kosovo exemplify such tendencies. Despite the fact that constitutionally Kosovo is defined as "a state of its citizens" (Article 1.2), meaning civic state, "multi-ethnicity" is the keyword in both the Ahtisaari Plan and the

<sup>80</sup> James G. Kellas, *The Politics of Nationalism and Ethnicity* (London: Macmillan, 1991), 77.

<sup>81</sup> According to Taylor, "Due recognition is not just a courtesy we owe people. It is a vital human need." For more, see: Charles Taylor, "The Politics of Recognition," in Amy Gutman (ed.), *Multiculturalism and "The Politics of Recognition"* (Princeton: Princeton University Press, 1992), 25.

<sup>82</sup> Michael Walzer, "The Politics of Difference: Statehood and Toleration in a Multicultural World," *Ratio Juris*, Vol. 10 No. 2 (1997) : 165-176.

<sup>83</sup> Will Kymlicka, *Multicultural Citizenship*, 6.

<sup>84</sup> Iris Marion Yung, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," in Ronald Beiner (ed.), *Theorizing Citizenship* (Albany: State University of New York Press, 1995), 184.

<sup>85</sup> Brian Barry, "The limits of cultural politics," *Review of International Studies* (1998), 307-319.

Kosovar Constitution itself. If equality is established *legally* among all citizens, *politically* every citizen is defined as a member of a community. The term community in this case refers to “inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo” (Article 57.1 of the Constitution). The new Kosovar Constitution on the one hand, by non recognising exclusions, loyalties or claims of ancestral rights, defends the universalist values of civic republicanism and individual liberalism and, on the other hand, speaks out for group rights (communities) and defends their exclusivity and group differentiated rights. Undoubtedly, this is what Finkelkraut calls “the paradox of the multi-cultural vision”.<sup>86</sup> Certainly, in the case of Kosovo we have de-ethnicisation of state institutions on the one hand, but on the other a multi-ethnic composition of the society reflected in politics i. e. *ethnicisation* of political and social status of citizens. As a result, we have at the same time neutral civic state institutions, and yet the very functioning of the state is based on multi-ethnicity (the neutral state being there to ensure that no group will dominate or be discriminated against).

It is important to see what the practical implications of these legal definitions are when it comes to political participation. What is the approach of political parties<sup>87</sup> to democracy, statehood and nationhood? Do they subscribe to the principles of multi-ethnicity in harmony with the constitution? To begin with, the fact that all the major political parties in Kosovo voted for both the Ahtisaari Plan and the Kosovar Constitution is an indicator of their approval and subscription to the principles of multi-ethnicity.<sup>88</sup> However, in practice, almost all the political parties remain ethnic parties. Moreover, none of the parties within the political system in Kosovo has a clear ideological profile. In the case of the Albanian parties, for years they have run on a national(ist) platform with a focus on Kosovo’s independence. However, following the declaration of independence, a general trend of moderation among the Kosovar Albanian leaders and evolution and shifting of the statehood and

<sup>86</sup> Cited in: Roger Scruton, *Philosopher on Dover Beach: Essays* (South Bend: St. Augustine’s Press, 1998), 325.

<sup>87</sup> Since 1999, political power in Kosovo was mainly contested between the Democratic League of Kosovo (*Lidhja Demokratike e Kosovës* – LDK), found in 1989 and with a tradition of non-violent activism led by its historic leader and the late President of Kosovo, Ibrahim Rugova and the two political parties that emerged from the disbanded Kosovo Liberation Army (KLA), the Democratic Party of Kosovo (*Partia Demokratike e Kosovës* - PDK), led by Hashim Thaçi – Kosovo’s present Prime Minister and the Alliance for the Future of Kosovo (*Aleanca për Ardhmërinë e Kosovës* - AAK). Other major parties in Kosovo include the Alliance for New Kosovo (*Aleanca Kosova e Re* - AKR), led by a renown Kosovar Albanian businessman, Behxhet Pacolli and the Democratic League of Dardania (*Lidhja Demokratike e Dardanisë* - LDD) which gathers former members of the LDK. The biggest party of the Serb community in Kosovo is the Independent Liberal Party (*Samostalna liberalna stranka* - SLS).

<sup>88</sup> The only important group that opposes the Ahtisaari Plan is a movement called “Self-determination” (*Lëvizja Vetëvendosje!*) Established in 2005, initially it opposed the idea of negotiations with Serbia on the issue of status and called for a right to self-determination through referendum. Ever since, it has been very active in opposing limitation to Kosovo’s sovereignty and international civilian presence in Kosovo. Recently, it announced its participation in the next parliamentary elections (due in 2011) on an anti-Ahtisaari platform. For more, see [www.vetevendosje.org](http://www.vetevendosje.org).

nationhood concepts is plain to see. Many parties and politicians, including the former political leader of the Kosovo Liberation Army and the present Prime Minister of Kosovo Hashim Thaçi, have already appropriated and internalised the 'euro-compatible' discourse which refers to the state and nation as a political community of all its equal citizens.

As far as other parties from smaller communities are concerned, they aim to represent their respective communities alone. The provision of guaranteed seats for smaller communities<sup>89</sup> in the parliament offers incentives to smaller parties to become identified as representatives of a certain community.<sup>90</sup> Regardless of this, there are plenty of examples of post-electoral coalitions and political cooperation between political parties representing various communities in Kosovo, both at the local and national level. For example, during local elections organised in fall 2009 in Kosovo, votes from the ranks of non-dominant communities (Serbs, Turks, Gorans etc), were crucial in determining the outcome of the elections for mayors in some municipalities where two Albanian candidates were running for the office. This trend is expected to continue and to increase in future local and national elections.

### *Citizenship, territory and minorities*

From the very outset of the modern state the idea of citizenship has been closely related to territory. Thus membership in a polity meant also access to a certain part of territory that belongs to a state. Likewise, in the case of Kosovo and its efforts to create an autonomous citizenship regime, territory is of exceptional political and geopolitical relevance. The Serb-Albanian dispute over the territory of Kosovo has been central to the conflict and continues to determine relations between the two groups in Kosovo even in the context of citizenship and minority rights. In an attempt to respond to the post-war ethno-demographic segregation and creation of small Serbian-controlled areas in Kosovo (in particular, the northern part of Kosovo) - which since 1999 functioned like enclaves – the representatives of the international community present in Kosovo decided to create new municipalities (based on the principle of ethno-majoritarianism).<sup>91</sup> The issue of decentralisation, which was initiated years before by UNMIK under the title of "local self-government reform", has been the burning issue during negotiations for the final status

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<sup>89</sup> Kosovo's Assembly has 120 seats and only 100 seats are subject to electoral contest between political parties and individuals. The remaining 20 seats are reserved for non-dominant communities; 10 are reserved for the Serb community and 10 for the other communities.

<sup>90</sup> For an overview of the voting trend and electoral behaviour in Kosovo prior to the declaration of independence see: Ilir Dugolli, Leon Malazogu at al., *Voting trends and electoral behavior in Kosovo 2000 – 2004*. Policy Research Series, No. 6 (Pristina: KIPRED, 2006).

<sup>91</sup> Dahlman and Williams have criticised this approach of territorial exclusivity and enclavisation process in Kosovo through the creation of new ethnically-pure municipalities. They argue, the process leads to ethnic segregation and merely advances the illiberal agenda of ethnonationalism. See Carl T. Dahlman and Trent Williams, "Ethnic Enclavisation and State Formation in Kosovo," *Geopolitics*, 1557-3028, Volume 15, Issue 2, (2010) : 406 – 430.



settlement. The final result, that is the Ahtisaari Plan, offered a broad range of rights to communities, including the decentralisation of power. Thus the Republic of Kosovo is a unitary state with a decentralised structure.<sup>92</sup> For Kosovar Albanian leaders involved in negotiations, certainly this was the price they had to pay to secure independence.

Accordingly, immediately after the independence, the Kosovar authorities initiated the creation of new municipalities with a Serb majority, in full compliance with the Ahtisaari Plan.<sup>93</sup> These municipalities had to be established after the local elections of 15 November 2009, the first ones to take place in an independent Kosovo. The Serb community representatives were successful in gaining power in four municipalities (including three newly created ones), boycotted the elections in three municipalities in northern Kosovo, lost in one municipality, and were successful in a further new municipality in elections organised in June 2010.<sup>94</sup> Undoubtedly, the creation of new municipalities fostering a substantial rate of participation amongst the Serb community in the elections was a major challenge completed by Kosovo in the aftermath of its independence. However, the task of integrating the northern part of Kosovo is a more complex one and will largely depend on the evolution of relations more generally between Kosovo and Serbia.

Kosovo's enhanced legislative framework grants a vast array of rights and protection to its non-dominant communities. These rights were enshrined in the Ahtisaari Plan (Annex II), the Constitution of Kosovo (Chapter II and III), Law on Protection and Promotion of the Rights and Interests of Communities and their Members in the Republic of Kosovo<sup>95</sup> and other laws which derive from the Ahtisaari Plan and are of "vital interest" to communities. Throughout the first months after February 2008, the protection of the rights and interests of minority communities was of central concern to the Kosovar institutions.<sup>96</sup> To that end, Kosovo has provided for a wide network of institutions and mechanisms dealing with human and minority rights.<sup>97</sup> But, regardless of the existence of this vast network of institutional mechanisms dealing with minority issues, proper coordination between them

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<sup>92</sup> Marc Weller, *Contested Statehood*, 214.

<sup>93</sup> Annex III on decentralisation of the Ahtisaari Plan foresees the establishment of six new or enhanced municipalities with a Kosovo Serb majority.

<sup>94</sup> For a detailed analysis of the decentralisation process and last year's local elections see: Ilir Deda, *Decentralization in Kosovo I: Municipal elections and the Serb participation*. Policy Brief No. 15 (Pristina: KIPRED, 2009); Ilir Deda and Krenar Gashi, *Decentralization in Kosovo II: Challenges of Serb majority municipalities*. Policy Brief No. 16 (Pristina: KIPRED, 2009). See also György Hajnal and Gábor Péteri, *Local reform in Kosovo*. Final Report (Pristina: Forum 2015, 2010).

<sup>95</sup> Law No. 03/L-047.

<sup>96</sup> European Centre for Minority Issues – Kosovo, *Strengthening the Institutional System for Communities in Post-Independence Kosovo*. Report. (Pristina: ECMI, 2009), 16.

<sup>97</sup> These include: Constitutional Council for Communities (with the office of the president of Kosovo), Ministry of Communities and Return, Advisory Office on Community Affairs (within the prime minister's office), Parliamentary Committee on the Rights and Interest of Communities, Advisory Office on Good Governance, Human Rights, Equal Opportunities and gender (within the prime minister's office), Ministerial Human Rights Units and Coordinators, Ombudsperson etc.

remains a problem. Non-governmental organisations dealing with minority issues have identified institutional overlap in development, review, monitoring, implementation of the legislation and policies, as well as overlap regarding programs and distribution of funds for communities.<sup>98</sup>

Apart from the quotas for non-dominant communities in the parliament, Kosovo's legislation provides quotas for women as well. On the basis of the gender equality principles, the quota for women in the Kosovar parliament is 30 per cent. Although this was a significant step towards empowerment of women in politics, this quota system did not provide women in Kosovo with substantial power when it comes to everyday politics. Mostly they remain sidelined. Moreover, according to a sociologist based in Kosovo, women in Kosovo found themselves silenced (with a reconfirmation of their status as the "Other"), as a result of the fact that "gender is used rationally between competing forces – the 'international community' and nationalists – as a tool to ensure UN's imposition of Western policies and norms and a mechanism for local politicians to consolidate their domination of the domestic/private sphere."<sup>99</sup> In such a climate of competing narratives, women are seen usually as victims and members of their respective ethnic communities, rather than as crucial agents of social and political change.

### c) Citizenship as identity

As is the case in Bosnia, Kosovo is a "state of international design."<sup>100</sup> Its legal foundations are a product of attempts by Kosovo's sponsors and supervisors (the EU and the US) to decouple "notions of nationality and citizenship"<sup>101</sup> and to reshape ethnic identities in the Balkans by way of institutional engineering. In this context, Kosovo is a "post-national state" where state membership and identity are, using Joppke's terminology, "structurally decoupled,"<sup>102</sup> with the state being unable to impose a certain identity on its citizens. Certainly, this affects other essential issues such as state cohesion, because a state that provides for liberalised citizenship and extensive minority rights often faces problems of unity and integration.<sup>103</sup> In a situation where recognition of group rights seems to perpetuate group differences, the state of Kosovo lacks a necessary integrative ideology. Insistence on "multi-ethnicity" and "multiculturalism" in a society deeply divided on an ethnic basis and without a common link, risks rendering these concepts meaningless.

<sup>98</sup> See European Centre for Minority Issues – Kosovo, *Strengthening the Institutional System for Communities in Post-Independence Kosovo*, 32-48.

<sup>99</sup> Vjollca Krasniqi, "Imagery, gender and power: the politics of representation in post-war Kosova," *Feminist Review*, 86, (2007), 1.

<sup>100</sup> Sumantra Bose, "The Bosnian State a Decade after Dayton," *International Peacekeeping* Vol. 12, No.3 (Autumn, 2005), 322.

<sup>101</sup> John B. Allcock, "Borders, states, citizenship: unscrambling Yugoslavia," in F. W. Carter and H. T. Norris (eds.), *The Changing Shape of the Balkans* (London: UCL Press, 1996), 74.

<sup>102</sup> Christian Joppke, 'Transformation of Citizenship: Status, Rights, Identity,' 44.

<sup>103</sup> *Ibid.*



Returning to the issue of citizenship as identity, according to Joppke, it encompasses both the views held by ordinary people and official views propagated by the state.<sup>104</sup> As far as the ordinary people are concerned in Kosovo, they seem to be divided based on ethno-national belonging and pledge loyalty to their ethnic nations or their kin-states. The paradox resides in the fact that many Kosovar Albanians do not consider Kosovo (including its legal framework and state iconography) to reflect its overwhelming Albanian majority whereas most of the Serbs consider it to be “an Albanian state.” This is why both Albanians and Serbs continue to prefer their respective national symbols (Albania’s and Serbia’s respective iconography) over the new Kosovar ones. Kosovar Albanians are divided between a minority who promote the idea of a Kosovar nation<sup>105</sup> and those who think that Kosovar Albanians are simultaneously indivisible part of the Albanian nation in the Balkans and Kosovar citizens. Indeed, the term ‘Kosovar’ has acquired many meanings in everyday use. Both local and international politicians and media use this term to refer to Kosovo’s citizens, Kosovar Albanians, or a Kosovar nation. In relation to the latter meaning, the following dilemmas remain generally unanswered: is there such a thing as a Kosovar nation? Does it include all Kosovo’s citizens or does it refer only to the majority – Albanians? Nonetheless, at present, many Kosovar Serbs, including those who are already working under Kosovo’s legal framework, still remain reluctant to identify<sup>106</sup> with the new state precisely because they see it as an “Albanian creation”.

On the other hand, as far as the second view of citizenship as identity – namely, the official view propagated by the state – is concerned, the new Kosovar state does not have a consistent view related to citizenship and identity. To begin with, the present institutional elite of Kosovo is entrusted with the building of a type of polity (de-ethnicised state and citizenship with enshrined rights for ethnic communities) that is far less and much different from their initial ambition and plan (a full-blown Kosovo Albanian nation-state). Many Kosovar politicians, both among the majority and minority communities, are not proponents of civic conceptions of nationhood. This state “ideological vacuum” leaves local people with no choice but to stick to their ethno-national belonging and to continue to show symbolic and emotional loyalty to their respective nations. Both its volatile and tragic past and its present constitutional design, in many ways, prevent Kosovo from achieving a

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<sup>104</sup> Ibid.

<sup>105</sup> In December 2001, Migjen Kelmendi, a publicist from Pristina, launched a debate on the future of Kosovo and its cultural, political, civil and state identity with participation of intellectuals, politicians, publicists and historians, who were invited to contribute to this debate in forms of written articles published in a weekly magazine - ‘Java’. This debate on Kosovar identity, which is very present nowadays, reflects the tension between various conceptions and understandings of nationhood and competing local and international visions of statehood and nationhood in Kosovo. For more on the ‘Java’ debate see Migjen Kelmendi and Arlinda Desku (Eds.), *Who is Kosovar? Kosovar Identity. A debate*. (Pristina: Java, 2005).

<sup>106</sup> The growing number of Serbs with Kosovar identity cards and passports does not necessary mean that they identify with the new state. Their motivations are pragmatic and practical in this context.

higher level of internal cohesion and generate common sense of identity for all its citizens. Definitely, in a situation of a “deinstitutionalized nation”<sup>107</sup> and institutionalised communities, Kosovo’s only integrative ideology might be what Habermas called “constitutional patriotism.”<sup>108</sup> Such an ideal would be hard to realise, bearing in mind Kosovo’s internal and external contested statehood.

#### **4. The Europeanisation of citizenship, contested statehood and mobility**

##### **a) Is Kosovo a state?**

One of the biggest problems in relation to Kosovo is its contested statehood, both internally and externally. As regards the international aspect, Kosovo’s declared independence in February 2008 has been fiercely opposed by Serbia, Russia, and Spain. This opposition and the very unilateral character of its declaration of independence (without an approval from either Serbia or the Security Council of the UN) have resulted in a limited number of recognitions of Kosovo’s sovereignty and independence thus far. Up to July 2010, Kosovo had succeeded in becoming a member of the World Bank and of the International Monetary Fund, but it needs more recognitions to apply for membership in major international political organisations, such as the UN, OSCE and the Council of Europe. The latest ICJ opinion, which found that Kosovo’s declaration of independence did not violate general international law, is important in this context, for it is expected to trigger a new wave of recognitions, thus strengthening Kosovo’s international subjectivity. Internally, Kosovo’s Serbs, backed by the Serbian state, have opposed the new state, thus creating a stateness problem. Consequently, Kosovo’s sovereignty is limited in some areas of the country, especially in northern Kosovo,<sup>109</sup> which is *de facto* under the control of Serbia. As a result of these limitations, since 2008 Kosovo “began a new chapter of international uncertainty burdened with the problems of both a Taiwan, with an ambiguous international status, and a divided Cyprus.”<sup>110</sup> Certainly, Kosovo’s ambiguous international status and contested statehood should be looked

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<sup>107</sup> Besnik Pula, “Who constitutes the state of Kosovo? Citizenship and the community in Ahtisaarian Kosovo,” in *European Identity of Kosova* - International symposium, held on 26 and 27 June 2007 (Prishtina: Forum 2015, 2008), 81.

<sup>108</sup> Jürgen Habermas, “The European Nation-state – Its Achievements and Its Limits. On the Past and Future of Sovereignty and Citizenship,” in Gopal Balakrishnan (ed.), *Mapping the Nation* (London and New York: Verso. 1996), 289.

<sup>109</sup> The problem with northern Kosovo is inherited from the UNMIK administration period. Despite the fact that the existence and operation of Serbia’s institutions contradicted and violated 1244 Resolution, UNMIK has tolerated parallel institutions in Kosovo that are financed by Serbia. Northern Kosovo was never under full control of the UNMIK or the Kosovar institutions and with the time became a “pocket of lawlessness”<sup>109</sup>. Term used by Kymlicka. See Will Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (Oxford: Oxford University Press, 2007), 49.

<sup>110</sup> Tim Judah, *Kosovo: What Everyone Needs to Know* (Oxford: Oxford University Press, 2008), 150-151.

at in the context of an “international environment [which] is too complex for any set of rules, including those regarding sovereignty, to be applied rigidly across all cases.”<sup>111</sup>

These limitations, on the other hand, have a direct impact on the process of democratisation and Europeanisation. O'Donnell identified three elements of the state that are absolute requirements for a functional democracy: a legal system that supports the rights and freedoms entailed by a democratic regime, a state apparatus that can enforce such rights throughout the territory, and finally, an official state ideological discourses and practices that increases state capacities to reinforce democratic values.<sup>112</sup> In the case of Kosovo, all these elements are either weak or nonexistent and Kosovo's obscure legal status and its highly complex relation with the international organisations and institutions such as the UN and the EU play a great part in generalised uncertainty. In a situation when neither the UN nor the EU recognises Kosovo as a sovereign state, challenges of achieving democracy can not be overcome unless Kosovo is recognised and functions as a sovereign state. Linz and Stepan clearly argue that sovereign state is a “prerequisite to democracy.”<sup>113</sup>

In addition, lack of membership in international organisations and institutions is problematic when it comes to the implementation of human rights standards and reporting.<sup>114</sup> Kosovo's constitution (Article 22) provides for direct applicability of the main international human rights agreements and instruments.<sup>115</sup> The fact that Kosovo although not a member of the relevant international organisations would have to apply the vast jurisprudence underpinning international human rights standards, including non-binding UN resolutions, as part of its domestic law poses a significant challenge for the future.<sup>116</sup> Given the fact that the Ahtisaari Plan was a ‘proposal’ that

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<sup>111</sup> Stephen D. Krasner, *Who Gets a State, and Why? The Relative Rules of Sovereignty*, 30 March 2009. Available at: <http://www.foreignaffairs.com> [last accessed: 15.01.2010].

<sup>112</sup> Cited in Oisín Tansey, “Democratization without a State: Democratic Regime-building in Kosovo,” 131.

<sup>113</sup> Ibid.

<sup>114</sup> Many international institutions that monitor human rights have chosen to adopt a strategy that focuses on general standards, rather than on the issue of Kosovo's status. For example, Björn von Sydow from the Political Affairs Committee of the Council of Europe (CoE) has spoken of CoE's intention to “insist on standards and not status” when dealing with Kosovo. See Telegrafi, *Sydow: Insistoj në ‘standardet e jo në statusin’* [Sydow: I insist on ‘standards and not status’], 14.06.2010. Available at: <http://www.telegrafi.com/?id=2&a=8995&komentet=1> [last accessed: 15.10.2010.]; The OSCE Mission in Kosovo has adopted the same approach. According to an OSCE official in Kosovo, OSCE focuses on ‘the applied law and not applicable law’ when monitoring human rights standards and implementation of the legislation in Kosovo. Personal interview with an OSCE official in Kosovo, Pristina, 10.05.2010.

<sup>115</sup> This includes the Universal Declaration of Human Rights; European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; International Covenant on Civil and Political Rights and its Protocols; Council of Europe Framework Convention for the Protection of National Minorities; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination Against Women etc.

<sup>116</sup> Marc Weller, *Contested Statehood*, 245.

was not endorsed by the Security Council of the UN, the source of obligations “is the self-limitation of sovereignty offered by Kosovo in its Declaration of Independence.”<sup>117</sup> Kosovo undertook to comply with these standards in return for broader recognition (especially from the EU members) and eventual membership in international bodies. Now that the process did not go in that direction, Kosovo is the only party under pressure to comply with the standards stemming from an internationally proposed legal framework. The main international institution with a clear mandate to assist and support the Kosovo authorities in the rule of law area (specifically in the police, judiciary and customs areas), as well as monitor, mentor and advise, is the European Union Rule of Law Mission in Kosovo (EULEX),<sup>118</sup> which does not treat Kosovo as a sovereign state.

Another aspect of Kosovo’s limited international sovereignty is related to the issue of mobility. Due to the fact that Kosovo’s passports are not recognised universally, its holders face various restrictions in their right to move freely. Consequently, Kosovo remains one of the most isolated countries on earth.<sup>119</sup> Many other countries, including two neighbouring ones, Serbia<sup>120</sup> and Bosnia and Herzegovina, do not recognise Kosovar documents. Moreover, Serbia and Bosnia have put a blockade on Kosovar products due to their refusal to recognise the validity of Kosovo’s customs.<sup>121</sup> As long as the legal obscurity with regard to Kosovo’s status continues, one can not expect a fast solution for these problems. In return, this certainly goes to the detriment of Kosovo’s otherwise poor economic records.

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<sup>117</sup> Ibid., 250.

<sup>118</sup> See <http://www.eulex-kosovo.eu/en/front> [last accessed: 15.06.2010].

<sup>119</sup> According to an ESI (European Stability Initiative) working paper, holders of the Kosovar passports can travel to only 5 countries visa free: Albania, Montenegro and Macedonia, Turkey, and Haiti. Even citizens of Afghanistan – the lowest ranked country in the 2008 global Henley & Partners ‘Visa Restriction Index’ – can travel to more places without a visa (22). See: ESI, *Isolating Kosovo? Kosovo vs Afghanistan 5:22, Discussion Paper* (Berlin, Brussels, Istanbul: ESI, 2009).

<sup>120</sup> In addition, Serbia has issued some 150 international arrest warrants against Kosovar Albanians, citizens of Kosovo. The list contains names of many present and former institutional leaders of Kosovo, people involved in the fighting during the 1999 war and others who allegedly have violated Serbia’s laws and committed crimes. Kosovo has requested from foreign states not to extradite these people to Serbia but since Kosovo is not a member of the Interpol, people from this list may easily end up in prisons in Serbia. In the past there have been several cases when Kosovo’s former Prime Minister Agim Çeku was stopped and arrested in foreign countries (Slovenia, Bulgaria and Columbia) based on Serbia’s arrest warrants. See KOHANet, *Serbia kërkon 150 shtetas të Kosovës për krime lufte* [Serbia pursues 150 Kosovar citizens for war crimes], 6 May 2010, available at: <http://www.koha.net/index.php?cid=1,24,20557> [last accessed: 10.05.2010].

<sup>121</sup> All the three countries are part of the Central European Free Trade Agreement – CEFTA, but the problem is that in the case of Kosovo, it was the UNMIK that signed the agreement in 2006. This situation disfavors Kosovo since its products can not be exported to Serbia and Bosnia and Herzegovina whereas the latter continue to profit from the elimination of barriers and continue to export goods to Kosovo. For more see <http://www.cefta2006.com>.

**b) The challenge of building a state and a potential member state simultaneously: EU's presence in Kosovo and its 'status-neutral' approach**

EU's active involvement in Kosovo since 1999 and the decision of most of the EU states to recognise Kosovo's statehood has been considered as a vital move in redressing the situation in its favour, or as a "first step towards the 'Europeanisation' of the Kosovo issue."<sup>122</sup> The Ahtisaari Plan foresaw a smooth transfer of power from the UN to the EU. This meant the termination of UNMIK's mandate and an increased role for the EULEX mission and ICO (International Civilian Office)<sup>123</sup> to strengthen its institutions, monitor their performance and implementation of the Ahtisaari Plan. After the declaration of independence, Kosovo invited the EU to deploy a rule of law mission in Kosovo, but because of the lack of consensus at the UN and the EU (Spain, Greece, Cyprus, Romania and Slovakia refuse to recognise Kosovo's independence), EULEX was deployed in Kosovo "under the general framework of United Nations Security Resolution 1244,"<sup>124</sup> which conditions it to adopt a 'status neutral' approach. Having accepted temporary limits in their sovereignty in return for recognition from the EU, Kosovar leaders felt cheated by the EU's failure to deliver its side of the bargain, which complicated the relationship between the Kosovar government and EULEX at the very outset.<sup>125</sup> This slowed down the process of transition from the UN to the EU and created confusion amongst the EU and EULEX officials.

As the "European Union's success in Kosovo is inextricably linked to its ability to speak 'with one voice',"<sup>126</sup> present disagreements among the EU member states on Kosovo's status diminish its position and reflect negatively on the internal developments in Kosovo and EU's role as a state-builder. Despite many high expectations, during its first two years of the mandate,<sup>127</sup> the EULEX Mission did not produce any significant results in the field of rule of law and fight against corruption

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<sup>122</sup> James Ker-Lindsay, *Kosovo: The Path to Contested Statehood in the Balkans* (London and New York: I.B.Tauris, 2009), 124.

<sup>123</sup> The head of the ICO is at the same time the International Civilian Representative (who reports to the International Steering Committee – a group of states that recognised Kosovo's independence) and European Union Special Representative. This 'two-hat' mandate allows Pieter Feith, the present head of the ICO, to speak both of Republic of Kosovo and Kosovo under UN 1244 resolution. See ICO's mandate at: <http://www.ico-kos.org/?id=1> [last accessed: 12.06.2010].

<sup>124</sup> See EULEX's Mission Statement, available at: <http://www.eulex-kosovo.eu/en/info/whatisEulex.php> [last accessed: 14.06.2010].

<sup>125</sup> International Crisis Group, *The Rule of Law in Independent Kosovo*, Europe Report N°204 (Pristina and Brussels, 19 May 2010), 3.

<sup>126</sup> Dimitris Papadimitrou, Petar Petrov and Labinot Greiçevci, "To Build a State: Europeanization, EU Actorness and State-Building in Kosovo," *European Foreign Affairs Review*, 12 (2007), 221.

<sup>127</sup> EULEX had an initial mandate of two years and in June 2010 the Council of the European Union has decided to extend its mandate until June 2012. See "EU Member States fully support EU's activities in Kosovo," 8 June 2010. Available at: <http://www.eulex-kosovo.eu/en/news/000234.php> [last accessed: 15.06.2010].

and organised crime.<sup>128</sup> Moreover, its presence in northern Kosovo remains only symbolic. Despite EULEX's deployment there, northern Kosovo continues to function as part of Serbia. Most importantly, EULEX has been unwilling to solve the problem with customs (border points 1 and 31), which remain a source of crime and insecurity for local people and for Kosovo in general.<sup>129</sup> Though sometimes EULEX itself is part of the problem (due to its inactivity), at the end of the day it is Kosovar institutions that will be evaluated and assessed by international organisations and the EU itself (through the yearly progress report) and criticised accordingly.

Despite the fact that Kosovo hosts the biggest ever EU Mission abroad, its relations with the EU are highly complicated. The EU's 'status neutral' approach prevents Kosovo from establishing the types of contractual relations with the EU akin to the other states in the Western Balkans. Though one of the main aims of the EU presence in Kosovo is to 'support Kosovo's European integration,' Kosovo lacks far behind other countries of the region in the process of integration. Or, to put it rightly, it has not started yet. When the EU created the Stabilization and Association process (SAP) in 1999 as its primary contribution to the Stability Pact for Southeast Europe, other countries in the region were offered access to Stabilisation Association process, whereas Kosovo is part of the SAP through a special mechanism, the Stabilization and Association Process Tracking Mechanism (SATM).

### **c) Limited mobility and visa liberalisation**

In the context of the emergence of visa free travel between the Western Balkans and the EU, all the other countries have been offered a clear roadmap for visa liberalisation. In 2008 the Commission of the European Communities proposed to move "forward with a structured approach to bring Kosovo's citizens closer to the EU through a *visa dialogue* [my emphasis] with the perspective of eventual visa liberalisation when the necessary reforms have been undertaken."<sup>130</sup> In July 2009 the European Commission proposed the introduction of new regulations on visas for

<sup>128</sup> In June 2010, the EULEX police has raided some of the Kosovar institutions and confiscated materials as part of the investigation for corruption. Arrestments might follow soon. However, EULEX's reputation was severely damaged in the eyes of local people following the case of 16 EULEX employees caught by the Macedonian police smuggling large amounts of cigarettes and alcohol into Kosovo early this year. See Balkan Insight, *EULEX Officers Caught 'Smuggling' Out of Kosovo*, 21 April 2010. Available at: <http://www.balkaninsight.com/en/main/news/27507> [last accessed: 15.10.2010].

<sup>129</sup> These border points used to function as customs under the UNMIK, but were attacked and destroyed by Serbs as a reaction to Kosovo's declaration of independence in 2008. Facilities there have been repaired and replaced and EULEX police has a permanent presence and check documents of people entering Kosovo, with exercise of full custom control not in sight. Moreover, EULEX operates a dual system, registering documents of all the people who enter Kosovo, but not Serbian documents. See International Crisis Group, *The Rule of Law in Independent Kosovo*, Europe Report N°204 (Pristina and Brussels, 19 May 2010).

<sup>130</sup> Commission of the European Communities, Communication from the Commission to the European Parliament and the Council. Kosovo - Fulfilling its European Perspective. COM (2009) 5343. Brussels, 14.10.2009.



Western Balkan countries.<sup>131</sup> This proposal, which was endorsed by the Council of the European Union on 30 November 2009,<sup>132</sup> allowed citizens of Macedonia, Montenegro and Serbia<sup>133</sup> to travel to all countries of the Schengen area without visas as of 19 December 2009. According to the Commission's proposal and the EU decision, residents of Kosovo holding a Serbian passport issued by the Coordination Directorate in Belgrade will still need a visa to enter the Schengen zone. This includes both Serbs and Albanians from Kosovo who have Serbian passports. Since Serbia considers all Kosovar residents to be Serb citizens, exclusion of Kosovar residents from the visa free regime is a clear case of discrimination on behalf of Serbia of one part of what it considers to be its citizenry.

Albania and Bosnia are expected to be granted visa-free regime later this year, with Kosovo remaining the only country in the Western Balkans without a clear prospect of visa liberalisation. Certainly, this may lead to proliferation of dual citizens in the region, with Kosovar citizens demanding Serbian, Albanian or Macedonian citizenship. In the case of Kosovo and Serbia, EU's approach of distinguishing between citizens of Serbia residing in Serbia and those residing in Kosovo, means differentiation between different 'classes' of citizenship and is hardly justifiable in the light of fundamental principles of non-discrimination.<sup>134</sup> While waiting for a roadmap for visa liberalisation, the Government of Kosovo adopted its own Roadmap on Visa Liberalisation<sup>135</sup> as well as an action plan for implementation of this roadmap. Apart from divisions within the EU, a roadmap and then visa liberalisation for Kosovo is highly dependant on the internal developments in Kosovo, especially with regard to the rule of law<sup>136</sup> and border control (a field in which EULEX holds executive competences), and, above all, developments in the triangle Kosovo-Serbia-EU.<sup>137</sup>

<sup>131</sup> See Commission of the European Communities. *Proposal for a Council Regulation 2009/0104 (CNS)*. Brussels, 15 July 2009. [www.eur-lex.europa.eu](http://www.eur-lex.europa.eu).

<sup>132</sup> See IP/09/1852. Brussels, 30 November 2009.

<sup>133</sup> According to the Commission's proposal and the EU decision, residents of Kosovo holding a Serbian passport issued by the Coordination Directorate in Belgrade will still need a visa to enter the Schengen zone. This includes both Serbs and Albanians from Kosovo who have Serbian passports.

<sup>134</sup> Jo Shaw, *The constitutional mosaic across the boundaries of the European Union: citizenship regimes in the new states of South Eastern Europe*, CITSEE Working Paper Series 2010/07, 23.

<sup>135</sup> Text available at: [http://www.mpb-ks.org/repository/docs/visa%20roadmap%20for%20Kosova\\_progress%20\\_2\\_.pdf](http://www.mpb-ks.org/repository/docs/visa%20roadmap%20for%20Kosova_progress%20_2_.pdf) [last accessed: 15.06.2010].

<sup>136</sup> Weak institutions and the problem of corruption remain other issues that may influence Kosovo's path toward visa liberalisation, as well as the significant number of migration of Kosovar citizens into the EU. According to estimates made by Eurostat, only in 2009 some 14,000 people from Kosovo asked for asylum in one of the EU Member States. This high trend of migration from Kosovo is a source of concern for many EU states. See Telegrafi, *Mbi 14,000 Kosovarë kërkojnë azil në BE* [Over 14,000 Kosovars request asylum in the EU]. 05.05.2010. Available at: <http://www.telegrafi.com/?id=2&a=8426> [last accessed: 15.06.2010].

<sup>137</sup> Both Serbian and the EU officials argue that Serbia's path to European integration and the issue of Kosovo are not related. However, many European diplomats have made it clear that good

In sum, if Europeanisation means “structural accommodation to the European architecture”<sup>138</sup> then Kosovo could profit a lot from the presence of the EU mission in the country in its attempt to harmonise legislation with the *acquis communautaire*. Apart from the legislation deriving from the Ahtisaari Plan that Kosovo adopted recently, the new state has established a professional, ethnically balanced Constitutional Court which should safeguard the implementation of the Kosovar constitution. Three out of nine judges are internationals, appointed by the president of the European Court of Human Rights in consultation with the International Civilian Office in Kosovo. This is a sign of multiple EU presence in the process of state-building, democratisation and Europeanisation in Kosovo.

In post-independence Kosovo, the EU is the main political actor and donor, with its largest ever mission deployed abroad – EULEX. Kosovo, more than any other Western Balkan candidate or potential candidate country, will be guided and assessed by the EU institutions.<sup>139</sup> Yet political will on the side of both Kosovo and the EU is crucial in the context of the Europeanisation and Kosovo’s EU membership. Kosovo remains a highly “penetrated society” due to the extensive external influences and interferences and due to this EU strong presence it is having a “forced-course development.”<sup>140</sup> Moreover, as Fagan put it, “The EU’s relationship with Kosovo is thus somewhat hegemonic insofar as it combines corrective powers a reformulation of the role of the international community – with the rigidities of conditionality.”<sup>141</sup> Nonetheless, the mere presence of the EU in the country is not sufficient and does not bring about automatic Europeanisation and democratisation of the Kosovar society and state. The EU’s inability to speak with a single voice in the case of Kosovo has lowered expectations and created many practical problems in the field. Kosovo’s present unfavourable status-quo and the vicious circle imposed as a result of Kosovo’s legal obscurity can be broken only with the maximal commitment of both Kosovar institutions and the EU.

Nonetheless, the ICJ Opinion is expected to pave the way for new political dynamics within the EU regarding its stance on Kosovo. EU’s eventual capacity to speak with one voice when it comes to Kosovo will open new horizons for Kosovo with regard to European perspective (above all, inclusion in the visa liberalisation process), help the EU mission in Kosovo to overcome its deadlock position (which is a consequence of the ‘status-neutral’ approach) and assist Kosovar institutions in exercising their authority throughout the territory of Kosovo.

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neighbourhood relations are a precondition for the European integration process. It remains to be seen the effect of EU conditionality in the case of Serbia and its reflections on Kosovo.

<sup>138</sup> Attila Ágh, “Process of democratisation in the East Central European and Balkan states; sovereignty-related conflicts in the context of Europeanization,” *Communist and Post-Communist Studies* 32 (1999), 268.

<sup>139</sup> Adam Fagan, *Europe’s Balkan Dilemma: Paths to Civil Society or State-Building?* (London and New York: I.B.Tauris, 2010), 162.

<sup>140</sup> Attila Ágh, “Process of democratisation in the East Central European and Balkan states,” 264.

<sup>141</sup> Adam Fagan, *Europe’s Balkan Dilemma*, 162.



## Conclusion

The intention of this paper was to cover a wide range of issues, including transformations of citizenship in the case of Kosovo from the early 20<sup>th</sup> century until present, and the spillover from one regime to the other, recent state-building endeavour as well as the issue of external intervention and supervision in the process of democratisation and Europeanisation of the citizenship regime in Kosovo. While recognising the significant progress made in the context of consolidation of Kosovo's autonomous citizenship regime, I have outlined various obstacles, mostly related to the issue of Kosovo's challenged legal and international status, which can negatively affect Kosovo's democratisation and Europeanisation prospects. I have shown how citizenship, understood as status, rights and identity, has been central to the negotiation process and the overall political and constitutional settlement in Kosovo. Unlike some other successor states of Yugoslavia, Kosovo could not and did not use citizenship as a tool of "ethnic engineering"<sup>142</sup> in the context of the state-building process. Rather, it used citizenship as a tool of integration that replaces pre-existing ethnic divisions and provides a mechanism for ensuring equality before the law. This is the first time in Kosovo's history that the legal foundation of the state has provided for equality before the law for its entire people without discrimination. In this context, it is easy to see the continued impact of the international actors – be it in the form of direct *intervention* under UNMIK or of direct *supervision* under the EULEX and ICO missions<sup>143</sup> – upon citizenship and other related matters.

In the context of the citizenship regime, Kosovar institutions face a double challenge for they have to both build an autonomous regime (as part of a broader state-building process) and harmonise it with the international norms. Despite the fact that the constitutional mosaic, as a useful metaphor for illuminating cases of plural normative authority,<sup>144</sup> put in place in Kosovo following the declaration of independence in 2008 is in full compliance with most of the international norms governing citizenship and human rights issues, the current political situation in Kosovo and the overall regional environment imposes various limitations in terms of the application of these laws in practice. Kosovo's statehood continues to be contested, both internally through the existence of parallel structures in the northern part of the country funded by Serbia and, externally as a result of attempts of Serbia and its political allies to undermine Kosovo's statehood and to block its membership in international organisations. All of this acts to the detriment of Kosovo's efforts to establish an autonomous citizenship regime suitable for a state defined in civic terms, as well as to ensure the necessary compliance with the international norms through membership in international organisations. The present situation of overlapping citizenship regimes between Kosovo and Serbia pose additional challenges in

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<sup>142</sup> Igor Štiks, "Nationality and Citizenship in the former Yugoslavia," 483.

<sup>143</sup> Jo Shaw, *The constitutional mosaic across the boundaries of the European Union*, 26.

<sup>144</sup> *Ibid*, 4.

relations between the two countries and causes various travel related obstacles and uncertainties for Kosovar citizens.

Last but not least, in the context of external intervention and supervision, I have argued that irrespective of the fact that Kosovo hosts the largest EU mission ever, and despite high expectations, the latter did not rise to the challenge of providing the necessary support in the field of rule of law and help Kosovar institutions to implement the new constitution throughout its entire territory and move closer to European democratic standards of governance. The EU's support is quintessential in Kosovo's democratisation and Europeanisation efforts, but as far as the EU remains internally divided when it comes to its relations with Kosovo and closes its eyes in the fact of Serbia's involvement in Kosovo's internal issues, the status quo in Kosovo will remain unchallenged for a long time. Without a breakthrough in the complex relations between Kosovo and the EU allowing the latter to build upon the basis of its current 'status-neutral' approach, Kosovo's leaders and its people will hardly find any incentive to carry on with the process or reforms and implementation of the present modern constitutional framework. The state of Kosovo is not only a project of its people; it is also an international project. The failure to make Kosovo a functional state, based on civic principles of equality and non-discrimination, means failure for Kosovo's leaders, and most importantly, failure of the European Union's institutional engineering in the Western Balkans.

Since democratic and all-inclusive citizenship is used as a tool for state building in Kosovo, the overall progress in the process of state-building in Kosovo is inherently linked to the consolidation and functionality of the citizenship regime. As far as the nature of the state is concerned, due to the fact that Kosovo is an entity de-ethnicised in legal terms, but heavily ethnicised in its political dimension, with the political arena composed of communities not citizens, one can refer to the Kosovar citizenship regime as a multi-ethnic one, yet ethnically and politically neutral. Undoubtedly, this citizenship regime is the cornerstone of the new state, which provides for civic and neutral state institutions that safeguard group-differentiated rights of Kosovo's various communities.



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